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AN ACT  
RELATING TO BOATING; ENACTING THE BOATING WHILE INTOXICATED  
ACT; PRESCRIBING PENALTIES FOR OPERATING A MOTORBOAT WHILE  
UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AUTHORIZING TESTING  
OF A PERSON'S BLOOD OR BREATH FOR ALCOHOL OR DRUGS; AMENDING  
AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- Sections 1 through 13 of this  
act may be cited as the "Boating While Intoxicated Act".

Section 2. DEFINITIONS. -- As used in the Boating While  
Intoxicated Act:

A. "bodily injury" means an injury to a person  
that is not likely to cause death or great bodily harm to  
the person, but does cause painful temporary disfigurement  
or temporary loss or impairment of the functions of any  
member or organ of the person's body;

B. "conviction" means an adjudication of guilt  
and does not include imposition of a sentence;

C. "motorboat" means any boat, personal  
watercraft or other type of vessel propelled by machinery,  
whether or not machinery is the principle source of  
propulsion. "Motorboat" includes a vessel propelled or  
designed to be propelled by a sail, but does not include a  
sailboard or a windsurf board. "Motorboat" does not include

1 a houseboat or any other vessel that is moored on the water,  
2 but not moving on the water; and

3 D. "operate" means to physically handle the  
4 controls of a motorboat that is moving on the water.

5 Section 3. OPERATING A MOTORBOAT WHILE UNDER THE  
6 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS. --

7 A. It is unlawful for a person who is under the  
8 influence of intoxicating liquor to operate a motorboat.

9 B. It is unlawful for a person who is under the  
10 influence of any drug to a degree that renders him incapable  
11 of safely operating a motorboat to operate a motorboat.

12 C. It is unlawful for a person who has an  
13 alcohol concentration of eight one hundredths or more in his  
14 blood or breath to operate a motorboat.

15 D. Aggravated boating while under the influence  
16 of intoxicating liquor or drugs consists of a person who:

17 (1) has an alcohol concentration of sixteen  
18 one hundredths or more in his blood or breath while  
19 operating a motorboat;

20 (2) has caused bodily injury to a human  
21 being as a result of the unlawful operation of a motorboat  
22 while under the influence of intoxicating liquor or drugs;  
23 or

24 (3) refused to submit to chemical testing,  
25 as provided for in the Boating While Intoxicated Act, and in

1 the judgment of the court, based upon evidence of  
2 intoxication presented to the court, was under the influence  
3 of intoxicating liquor or drugs.

4 E. Every person under first conviction pursuant  
5 to this section shall be punished, notwithstanding the  
6 provisions of Section 31-18-13 NMSA 1978, by imprisonment  
7 for not more than ninety days or by a fine of not more than  
8 five hundred dollars (\$500), or both; provided that if the  
9 sentence is suspended in whole or in part or deferred, the  
10 period of probation may extend beyond ninety days but shall  
11 not exceed one year. The offender shall be ordered by the  
12 court to attend a boating safety course approved by the  
13 national association of state boating law administrators.

14 An offender ordered by the court to attend a boating safety  
15 course shall provide the court with proof that the offender  
16 successfully completed the course within seven months of his  
17 conviction or prior to completion of his probation,  
18 whichever period of time is less. In addition to those  
19 penalties, when an offender commits aggravated boating while  
20 under the influence of intoxicating liquor or drugs, the  
21 offender shall be sentenced to not less than forty-eight  
22 consecutive hours in jail and may be fined not more than  
23 seven hundred fifty dollars (\$750). On a first conviction  
24 under this section, any time spent in jail for the offense  
25 prior to the conviction for that offense shall be credited

1 to any term of imprisonment fixed by the court. A deferred  
2 sentence pursuant to this subsection shall be considered a  
3 first conviction for the purpose of determining subsequent  
4 convictions.

5 F. A second or subsequent conviction pursuant to  
6 this section shall be punished, notwithstanding the  
7 provisions of Section 31-18-13 NMSA 1978, by imprisonment  
8 for not more than three hundred sixty-four days or by a fine  
9 of not more than seven hundred fifty dollars (\$750), or  
10 both; provided that if the sentence is suspended in whole or  
11 in part, the period of probation shall not exceed one year.  
12 In addition to those penalties, when an offender commits  
13 aggravated boating while under the influence of intoxicating  
14 liquor or drugs, the offender shall be sentenced to not less  
15 than forty-eight consecutive hours in jail and may be fined  
16 not more than one thousand dollars (\$1,000).

17 Section 4. GUILTY PLEAS--LIMITATIONS.--When a  
18 complaint or information alleges a violation of Section 3 of  
19 the Boating While Intoxicated Act, any plea of guilty  
20 thereafter entered in satisfaction of the charges shall  
21 include at least a plea of guilty to the violation of one of  
22 the subsections of Section 3 of that act, and no other  
23 disposition by plea of guilty to any other charge in  
24 satisfaction of the charge shall be authorized if the  
25 results of a test performed pursuant to that act disclose

1 that the blood or breath of the person charged contains an  
2 alcohol concentration of eight one hundredths or more.

3 Section 5. MUNICIPAL AND COUNTY ORDINANCES--UNLAWFUL  
4 ALCOHOL CONCENTRATION LEVEL FOR BOATING WHILE UNDER THE  
5 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--No municipal or  
6 county ordinance prohibiting the operation of a motorboat  
7 while under the influence of intoxicating liquor or drugs  
8 shall be enacted that provides for an unlawful alcohol  
9 concentration level that is different than the alcohol  
10 concentration levels provided in Section 3 of the Boating  
11 While Intoxicated Act.

12 Section 6. BLOOD-ALCOHOL TESTS--PERSONS QUALIFIED TO  
13 PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL LIABILITY.--  
14 Only a physician, licensed professional or practical nurse  
15 or laboratory technician or technologist employed by a  
16 hospital or physician shall withdraw blood from a person in  
17 the performance of a blood-alcohol or drug test. A  
18 physician, nurse, technician or technologist who withdraws  
19 blood from a person in the performance of a blood-alcohol or  
20 drug test that has been directed by a law enforcement  
21 officer, or by a judicial or probation officer, shall not be  
22 held liable in a civil or criminal action for assault,  
23 battery, false imprisonment or any conduct of a law  
24 enforcement officer, except for negligence, nor shall a  
25 person assisting in the performance of the test, or a

1 hospital wherein blood is withdrawn in the performance of  
2 the test, be subject to civil or criminal liability for  
3 assault, battery, false imprisonment or any conduct of a law  
4 enforcement officer, except for negligence.

5 Section 7. BLOOD-ALCOHOL TEST--LAW ENFORCEMENT,  
6 JUDICIAL OR PROBATION OFFICER UNAUTHORIZED TO MAKE ARREST OR  
7 DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL DUTIES  
8 AUTHORIZED BY LAW.--Nothing in the Boating While Intoxicated  
9 Act is intended to authorize a law enforcement officer, or a  
10 judicial or probation officer, to make an arrest or direct  
11 the performance of a blood-alcohol or drug test, except in  
12 the performance of his official duties or as otherwise  
13 authorized by law.

14 Section 8. IMPLIED CONSENT TO SUBMIT TO CHEMICAL  
15 TEST.--

16 A. A person who operates a motorboat within this  
17 state shall be deemed to have given consent, subject to the  
18 provisions of the Boating While Intoxicated Act, to chemical  
19 tests of his blood or breath or both, approved by the  
20 scientific laboratory division of the department of health  
21 pursuant to the provisions of Section 24-1-22 NMSA 1978 as  
22 determined by a law enforcement officer, or for the purposes  
23 of determining the drug or alcohol content of his blood if  
24 arrested for any offense arising out of acts alleged to have  
25 been committed while the person was operating a motorboat

1 while under the influence of an intoxicating liquor or drug.

2 B. The arrested person shall be advised by a law  
3 enforcement officer that failure to submit to a chemical  
4 test may be introduced into evidence in court and that the  
5 court, upon conviction, may impose increased penalties for  
6 the person's failure to submit to a chemical test.

7 C. A test of blood or breath or both, approved  
8 by the scientific laboratory division of the department of  
9 health pursuant to the provisions of Section 24-1-22 NMSA  
10 1978, shall be administered at the direction of a law  
11 enforcement officer having reasonable grounds to believe the  
12 person to have been operating a motorboat while under the  
13 influence of an intoxicating liquor or drug.

14 D. A person who operates a motorboat in this  
15 state and who is involved in a fatal boating incident shall  
16 be deemed to have given consent, subject to the provisions  
17 of the Boating While Intoxicated Act, to mandatory chemical  
18 tests of his blood or breath or both, as determined by a law  
19 enforcement officer and approved by the scientific  
20 laboratory division of the department of health pursuant to  
21 the provisions of Section 24-1-22 NMSA 1978.

22 Section 9. CONSENT OF PERSON INCAPABLE OF REFUSAL NOT  
23 WITHDRAWN. --A person who is dead, unconscious or otherwise  
24 in a condition rendering him incapable of refusal shall be  
25 deemed not to have withdrawn the consent provided by the

1 Boating While Intoxicated Act, and the test designated by  
2 the law enforcement officer may be administered.

3 Section 10. ADMINISTRATION OF CHEMICAL TEST--PAYMENT  
4 OF COSTS--ADDITIONAL TESTS.--

5 A. Only the persons authorized by the Boating  
6 While Intoxicated Act shall withdraw blood from a person for  
7 the purpose of determining its alcohol or drug content.  
8 This limitation does not apply to the taking of samples of  
9 breath.

10 B. The person tested shall be advised by the law  
11 enforcement officer of the person's right to be given an  
12 opportunity to arrange for a physician, licensed  
13 professional or practical nurse or laboratory technician or  
14 technologist who is employed by a hospital or physician of  
15 his own choosing to perform a chemical test in addition to a  
16 test performed at the direction of a law enforcement  
17 officer.

18 C. Upon the request of the person tested, full  
19 information concerning the test performed at the direction  
20 of the law enforcement officer shall be made available to  
21 him as soon as it is available from the person performing  
22 the test.

23 D. The agency represented by the law enforcement  
24 officer at whose direction the chemical test is performed  
25 shall pay for the chemical test.

1 E. If a person exercises his right under  
2 Subsection B of this section to have a chemical test  
3 performed upon him by a person of his own choosing, the cost  
4 of that test shall be paid by the agency represented by the  
5 law enforcement officer at whose direction a chemical test  
6 was administered pursuant to Section 8 of the Boating While  
7 Intoxicated Act.

8 Section 11. USE OF TESTS IN CRIMINAL OR CIVIL ACTIONS-  
9 -LEVELS OF INTOXICATION--MANDATORY CHARGING.--

10 A. The results of a test performed pursuant to  
11 the Boating While Intoxicated Act may be introduced into  
12 evidence in a civil action or criminal action arising out of  
13 the acts alleged to have been committed by the person tested  
14 for operating a motorboat while under the influence of  
15 intoxicating liquor or drugs.

16 B. When the blood or breath of the person tested  
17 contains:

18 (1) an alcohol concentration of five one  
19 hundredths or less, it shall be presumed that the person was  
20 not under the influence of intoxicating liquor; or

21 (2) an alcohol concentration of more than  
22 five one hundredths but less than eight one hundredths, no  
23 presumption shall be made that the person either was or was  
24 not under the influence of intoxicating liquor. However,  
25 the amount of alcohol in the person's blood or breath may be

1 considered with other competent evidence in determining  
2 whether the person was under the influence of intoxicating  
3 liquor.

4 C. When the blood or breath of the person tested  
5 contains an alcohol concentration of eight one hundredths or  
6 more, the arresting officer shall charge him with a  
7 violation of Section 3 of the Boating While Intoxicated Act.

8 D. The determination of alcohol concentration  
9 shall be based on the grams of alcohol in one hundred  
10 milliliters of blood or the grams of alcohol in two hundred  
11 ten liters of breath.

12 E. The alcohol concentration in a person's blood  
13 or breath shall be determined by a chemical test  
14 administered to the person within three hours of the alleged  
15 boating while under the influence of intoxicating liquor.

16 In a prosecution pursuant to the provisions of the Boating  
17 While Intoxicated Act, it is a rebuttable presumption that a  
18 person is in violation of the provisions of that act if he  
19 has an alcohol concentration of eight one hundredths or more  
20 in his blood or breath as determined by a chemical test  
21 administered to the person within three hours of the alleged  
22 boating while under the influence of intoxicating liquor.

23 If the chemical test is administered more than three hours  
24 after the alleged boating while under the influence of  
25 intoxicating liquor, the test result is admissible as

1 evidence of the alcohol concentration in the person's blood  
2 or breath at the time of the alleged boating and the trier  
3 of fact shall determine what weight to give the test result.

4 F. The presumptions in Subsection B of this  
5 section do not limit the introduction of other competent  
6 evidence concerning whether the person was under the  
7 influence of intoxicating liquor.

8 G. If a person is convicted of operating a  
9 motorboat while under the influence of intoxicating liquor  
10 or drugs, the trial judge shall be required to inquire into  
11 past convictions of the person for operating a motorboat  
12 while under the influence of intoxicating liquor or drugs  
13 before sentence is entered in the matter.

14 Section 12. MOTORBOATS--INFLUENCE OF INTOXICATING  
15 LIQUOR OR DRUGS--FEE UPON CONVICTION.--

16 A. A person convicted of a violation of the  
17 Boating While Intoxicated Act shall be assessed by the  
18 court, in addition to any other fee or fine, a fee of sixty-  
19 five dollars (\$65.00) to defray the costs of chemical and  
20 other tests used to determine the influence of intoxicating  
21 liquor or drugs.

22 B. All fees collected pursuant to the provisions  
23 of this section shall be transmitted monthly to the crime  
24 laboratory fund. All balances in the crime laboratory fund  
25 collected pursuant to this section are appropriated to the

1 administrative office of the courts for payment upon invoice  
2 to the scientific laboratory division of the department of  
3 health for the costs of chemical and other tests used to  
4 determine the influence of intoxicating liquor or drugs.

5 C. Payment of funds out of the crime laboratory  
6 fund of fees collected pursuant to this section shall be  
7 made upon vouchers issued and signed by the director of the  
8 administrative office of the courts upon warrants drawn by  
9 the department of finance and administration.

10 Section 13. EDUCATIONAL PROGRAM.--The state parks  
11 division of the energy, minerals and natural resources  
12 department shall develop and implement a program to  
13 advertise and further educate the boating public about the  
14 dangers of boating while under the influence of alcohol or  
15 drugs and the penalties associated with a conviction  
16 pursuant to the provisions of the Boating While Intoxicated  
17 Act.

18 Section 14. Section 24-1-22 NMSA 1978 (being Laws  
19 1981, Chapter 165, Section 1) is amended to read:

20 "24-1-22. SCIENTIFIC LABORATORY DIVISION-- TESTING  
21 METHODS-- CERTIFICATION. --

22 A. The scientific laboratory division of the  
23 department of health is authorized to promulgate and approve  
24 satisfactory techniques or methods to test persons believed  
25 to be operating a motor vehicle or a motorboat under the  
influence of drugs or alcohol and to issue certification for

1 test operators and their instructors that shall be subject  
2 to termination or revocation at the discretion of the  
3 scientific laboratory division. The scientific laboratory  
4 division is further authorized to establish or approve  
5 quality control measures for alcohol breath testing and to  
6 establish or approve standards of training necessary to  
7 ensure the qualifications of individuals conducting these  
8 analyses or collections.

9 B. The scientific laboratory division shall  
10 establish criteria and specifications for equipment,  
11 training, quality control, testing methodology, blood-breath  
12 relationships and the certification of operators,  
13 instructors and collectors of breath samples.

14 C. All laboratories analyzing breath, blood or  
15 urine samples pursuant to the provisions of the Implied  
16 Consent Act and the Boating While Intoxicated Act shall be  
17 certified by the scientific laboratory division. The  
18 certification shall be granted in accordance with the rules  
19 and regulations of the scientific laboratory division and  
20 shall be subject to termination or revocation for cause. "

21 Section 15. Section 66-12-11 NMSA 1978 (being Laws  
22 1959, Chapter 338, Section 10, as amended) is amended to  
23 read:

24 "66-12-11. PROHIBITED OPERATION. --

25 A. A person shall not operate any motorboat or

1 vessel or manipulate any water skis, surfboard or similar  
2 device in a reckless or negligent manner so as to endanger  
3 the life or property of any person.

4 B. A person shall not operate any vessel, not  
5 defined as a motorboat pursuant to the provisions of the  
6 Boating While Intoxicated Act, or manipulate any water skis,  
7 surfboard or similar device while intoxicated or under the  
8 influence of any narcotic drug, barbiturate or marijuana. "

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9 Section 16. EFFECTIVE DATE. --The effective date of the  
10 provisions of this act is July 1, 2003. \_\_\_\_\_  
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